

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA220

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/014198

International filing date (day/month/year)
14.12.2004

Priority date (day/month/year)
22.12.2003

International Patent Classification (IPC) or both national classification and IPC
A23G3/02, A23G1/20, A23G9/20, A23G9/28

Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA220.

3. For further details, see notes to Form PCT/ISA220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4485

Authorized Officer

Gaiser, M

Telephone No. +49 89 2399-2383



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/014198

Box No. 1 Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/014198

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-18
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-18
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. The following documents (D1 and D2) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: US-A-2 013 016 (VOGT CLARENCE W) 3 September 1935 (1935-09-03)

D2: EP-A-0 221 369 (HAMMERLE MARTIN) 13 May 1987 (1987-05-13)

2. The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claims 1, 10 and 18 does not involve an inventive step in the sense of Article 33(3) PCT.

a.) From D2, which is considered as representing the closest available prior art with respect to the subject-matter of claim 1, a depositing device is known comprising a chamber from which a food material can be deposited by the action of a piston. The outlet of said chamber is closed by a ball valve that is biased closed by a spring (see Fig. 1; page 6, lines 1-10). The pressure in the chamber before dosing is the same as in the feeding hopper.

The problem to be solved is to modify the device known from D2 such that it can be used to metre out aerated food materials, e.g. ice cream.

From D1 a depositing device is known in which an ice cream mix, that is aerated is frozen in a freezing chamber, that is pressurised utilising a pressure retention valve. This is used to control the foam texture and thus the overall structure of the ice cream product. The depositing mechanism utilised in D1, however, is rather complicated, while the one known from D2 is compact and provided with excellent cleanability.

In order to design a suitable depositing device the man skilled in the art would thus consider the obvious combination of D1 and D2, and thus arrive at a device as defined in claim 1.

b.) Accordingly, the incorporation of the dosing spout known from D2 into the machine disclosed in D1 the man skilled in the art would arrive at a device for producing food as defined in claim 10, and at a method as defined in claim 18.

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International application No.

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3. Dependent claims 2-9 and 11-17 are only allowable when depending on an allowable independent claim.